

CENTER FOR DISABILITY ACCESS
Raymond Ballister, Jr., Esq., SBN 111282
Mark Potter, Esq., SBN 166317
Phyl Grace, Esq., SBN 171771
Dennis Price, SBN 279082
Mail: PO Box 262490
San Diego, CA 92196-2490
Delivery: 9845 Erma Road, Suite 300
San Diego, CA 92131
(858) 375-7385; (888) 422-5191 fax
phylg@potterhandy.com

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Raul Uriarte,
Plaintiff,

v.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of:** American's With Disabilities
Act; Unruh Civil Rights Act

Alan Fluhrer, in his individual and
representative capacity as trustee of
the Alan Fluhrer and Deborah Santi-
Fluhrer 2007 Trust;
Deborah Santi-Fluhrer, in her
individual and representative
capacity as trustee of the Alan
Fluhrer and Deborah Santi-Fluhrer
2007 Trust;
Thorndike Investment Co., Inc., a
California Corporation; and Does 1-
10,

Defendants.

Plaintiff Raul Uriarte complains of Defendants Alan Fluhrer, in his individual and representative capacity as trustee of the Alan Fluhrer and Deborah Santi-Fluhrer 2007 Trust; Deborah Santi-Fluhrer, in her individual and representative capacity as trustee of the Alan Fluhrer and Deborah Santi-

1 Fluhner 2007 Trust; Thorndike Investment Co., Inc., a California
2 Corporation; and Does 1-10 ("Defendants") and alleges as follows:

3
4 **PARTIES:**

5 1. Plaintiff is a California resident with physical disabilities. He is a
6 paraplegic who uses a wheelchair for mobility.

7 2. Defendants are, or were at the time of the incidents, the real property
8 owners, business operators, lessors and/or lessees for Johnny's Pool Services
9 ("Johnny's") located at or about 404 N. Barranca Avenue, Covina, California.

10 3. Plaintiff does not know the true names of Defendants, their business
11 capacities, their ownership connection to the property and business, or their
12 relative responsibilities in causing the access violations herein complained of,
13 and alleges a joint venture and common enterprise by all such Defendants.
14 Plaintiff is informed and believes that each of the Defendants herein,
15 including Does 1 through 10, inclusive, is responsible in some capacity for
16 the events herein alleged, or is a necessary party for obtaining appropriate
17 relief. Plaintiff will seek leave to amend when the true names, capacities,
18 connections, and responsibilities of the Defendants and Does 1 through 10,
19 inclusive, are ascertained.

20
21 **JURISDICTION & VENUE:**

22 4. This Court has subject matter jurisdiction over this action pursuant to
23 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans
24 with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

25 5. Pursuant to pendant jurisdiction, an attendant and related cause of
26 action, arising from the same nucleus of operative facts and arising out of the
27 same transactions, is also brought under California's Unruh Civil Rights Act,
28 which act expressly incorporates the Americans with Disabilities Act.

1 6. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
2 founded on the fact that the real property which is the subject of this action is
3 located in this district and that Plaintiff's cause of action arose in this district.
4

5 **FACTUAL ALLEGATIONS:**

6 7. The Plaintiff went to Johnny's in February of 2015 to shop.

7 8. Johnny's is a facility open to the public, a place of public
8 accommodation, and a business establishment.

9 9. Parking is one of the facilities, privileges and advantages offered by
10 defendants to their customers at Johnny's.

11 10. Unfortunately, although parking is one of the facilities specifically
12 reserved for patrons of Johnny's, there is not a single compliant parking space
13 reserved for persons with disabilities available. Instead, the defendants use
14 the parking space ostensibly reserved for persons with disabilities for
15 equipment, including a tent, and other storage items. The plaintiff was
16 unable to park on the day of his visit because of defendants' practice of
17 storing items in the parking space.

18 11. Defendants have no policy or procedure in place to make sure that the
19 accessible parking spaces remain useable in the parking lot. As such, the
20 parking space reserved for persons with disabilities is no longer available.
21 Indeed, defendants have a practice of using the parking space for store
22 business. Tents and other items are regularly kept in the space.

23 12. The plaintiff personally encountered these problems. This inaccessible
24 condition denied the plaintiff full and equal access and caused him difficulty
25 and frustration.

26 13. Plaintiff also alleges, though he did not personally confront the
27 barriers, that transaction counter in Johnny's is 42 inches in height. There is
28 no lowered, 36 inch portion of counter for use by persons in wheelchairs.

1 Moreover, the defendants crowd the transaction counter with merchandise
2 and displays that narrow the clear width of the counter to far less than 36
3 inches.

4 14. Finally, although there are shelves and merchandise aisles open to
5 customers for shopping, the path of travel in and throughout these
6 merchandise aisles is not accessible to wheelchair users because of the
7 configuration of the store and also because the defendants have a practice of
8 placing merchandise and merchandise display on the route of travel
9 restricting passage to far less than 36 inches in width.

10 15. Plaintiff would like to return and patronize Johnny's but will be
11 deterred from visiting until the defendants cure the violations. Plaintiff's
12 knowledge of the barriers deters him from returning even though he would
13 like to visit -- and has wanted to visit -- Johnny's since his last visit. Indeed,
14 plaintiff lives about 15 minutes to 20 minutes from Johnny's. Johnny's is
15 conveniently located for plaintiff.

16 16. Given the obvious and blatant violations, the plaintiff alleges, on
17 information and belief, that there are other violations and barriers on the site
18 that relate to his disability. Plaintiff will amend the complaint, to provide
19 proper notice regarding the scope of this lawsuit, once he conducts a site
20 inspection. However, please be on notice that the plaintiff seeks to have all
21 barriers related to his disability remedied. See *Doran v. 7-11*, 506 F.3d 1191
22 (9th Cir. 2007) (holding that once a plaintiff encounters one barrier at a site,
23 he can sue to have all barriers that relate to his disability removed regardless
24 of whether he personally encountered them).

25 17. Additionally, on information and belief, the plaintiff alleges that the
26 failure to remove these barriers was intentional because: (1) these particular
27 barriers are intuitive and obvious; (2) the defendants exercised control and
28 dominion over the conditions at this location and, therefore, the lack of

1 accessible facilities was not an “accident” because had the defendants
 2 intended any other configuration, they had the means and ability to make the
 3 change.

4
 5 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
 6 **WITH DISABILITIES ACT OF 1990** (On behalf of plaintiffs and against all
 7 defendants (42 U.S.C. section 12101, et seq.)

8 18. Plaintiff repleads and incorporates by reference, as if fully set forth
 9 again herein, the allegations contained in all prior paragraphs of this
 10 complaint.

11 19. Under the ADA, it is an act of discrimination to fail to ensure that the
 12 privileges, advantages, accommodations, facilities, goods and services of any
 13 place of public accommodation is offered on a full and equal basis by anyone
 14 who owns, leases, or operates a place of public accommodation. See 42
 15 U.S.C. § 12182(a). Discrimination is defined, inter alia, as follows:

- 16 a. A failure to make reasonable modifications in policies, practices,
 17 or procedures, when such modifications are necessary to afford
 18 goods, services, facilities, privileges, advantages, or
 19 accommodations to individuals with disabilities, unless the
 20 accommodation would work a fundamental alteration of those
 21 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 22 b. A failure to remove architectural barriers where such removal is
 23 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
 24 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,
 25 Appendix “D.”
- 26 c. A failure to make alterations in such a manner that, to the
 27 maximum extent feasible, the altered portions of the facility are
 28 readily accessible to and usable by individuals with disabilities,

1 including individuals who use wheelchairs or to ensure that, to
2 the maximum extent feasible, the path of travel to the altered
3 area and the bathrooms, telephones, and drinking fountains
4 serving the altered area, are readily accessible to and usable by
5 individuals with disabilities. 42 U.S.C. § 12183(a)(2).

6 20. Any business that provides parking spaces must provide handicap
7 parking spaces. 1991 Standards § 4.1.2(5); 2010 Standards § 208. One in
8 every eight of those handicap parking spaces but not less than one must be a
9 “van” accessible parking space, *i.e.*, having an eight foot access aisle. 1991
10 Standards § 4.1.2(5)(b). Under the 2010 Standards, one in every six
11 accessible parking spaces must be van accessible. 2010 Standards § 208.2.4.

12 21. Here, because the defendants place store merchandise and other items
13 in the parking space reserved for persons with disabilities, there is no
14 available place for persons with disabilities to park.

15 22. Shelves and display units allowing self-service by customers at stores
16 must be located on an accessible route. 1991 Standards § 4.1.3(12)(b). An
17 accessible route must be at least 36 inches in width. 1991 Standards § 4.3.3.

18 23. Here, the failure to provide accessible paths of travel in and throughout
19 the merchandise aisles is a violation of the law.

20 24. A public accommodation must maintain in operable working condition
21 those features of its facilities and equipment that are required to be readily
22 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

23 25. Here, the failure to ensure that the accessible facilities were available
24 and ready to be used by the plaintiff is a violation of the law.

25 26. Given its location and options, Johnny’s is a business that the plaintiff
26 will continue to desire to patronize but he has been and will continue to be
27 discriminated against due to the lack of accessible facilities and, therefore,
28 seeks injunctive relief to remove the barriers.

1 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
2 **RIGHTS ACT** (On behalf of plaintiffs and against all defendants) (Cal Civ §
3 51-53)

4 27. Plaintiff repleads and incorporates by reference, as if fully set forth
5 again herein, the allegations contained in all prior paragraphs of this
6 complaint.

7 28. Because the defendants violated the plaintiffs' rights under the ADA,
8 they also violated the Unruh Civil Rights Act and are liable for damages. (Civ.
9 Code § 51(f), 52(a).)

10 29. Because the violation of the Unruh Civil Rights Act resulted in
11 difficulty, discomfort or embarrassment for the plaintiffs, the defendants are
12 also each responsible for statutory damages, i.e., a civil penalty. (Civ. Code §
13 55.56(a)-(c).)

14
15 **PRAYER:**

16 Wherefore, Plaintiff prays that this court award damages and provide
17 relief as follows:

18 1. For injunctive relief, compelling defendants to comply with the
19 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
20 Plaintiff is not invoking section 55 of the California Civil Code and is not
21 seeking injunctive relief under the Disabled Persons Act at all.

22 2. Damages under the Unruh Civil Rights Act which damages provide for
23 actual damages and a statutory minimum of \$4,000.

1 3. Reasonable attorney fees, litigation expenses and costs of suit,
2 pursuant to 42 U.S.C. § 12205; Cal. Civ. Code § 52.

3
4 Dated: March 29, 2015 CENTER FOR DISABILITY ACCESS

5
6 By: 
7 Mark Potter, Esq.
8 Attorneys for Plaintiff
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28